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VIA EMAIL

May 6, 2019

Commissioner Liane Randolph
Commissioner Clifford Rechtschaffen
Commissioner Committee on Policy & Governance
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3214
PolicyandGovernance@cpuc.ca.gov

Re: Informal Comments on Timely Resolution of California Public Utilities
Commission Proceedings

Dear Commissioner Randolph and Commissioner Rechtschaffen:

I am submitting this letter on behalf of California Water Association ("CWA") and its member water companies regulated by the California Public Utilities Commission ("Commission"). We welcome the opportunity to provide informal comments on ways to resolve formal Commission proceedings more quickly and efficiently, consistent with due process and providing parties with meaningful opportunities to participate. CWA previously participated in the discussion of this issue at the March 27, 2019 meeting of the Commissioner Committee on Policy & Governance.

CWA is pleased that the Commission is considering ways to expedite and resolve its proceedings in a timely manner. Notwithstanding the availability of interim rates in general rate cases, delayed decisions nevertheless hamper cash flow, impose significant risk in utilities moving forward with much-needed projects (because of the lag in pending approvals), postpone implementation of beneficial policies and procedures, impede efforts to further Commission and State policy objectives related to drinking water, and often lead to customer confusion and frustration.

The uncertainty caused by delayed decisions in all ratesetting proceedings, including general rate cases, can have significant negative financial impacts for utilities and their customers. Further, such delays will undermine confidence in the Commission's regulatory authority. CWA will discuss below some of the existing guidelines and requirements for resolution of Commission proceedings, proposals for ways to increase efficiency and avoid delay, and some of the suggestions made at the March 27, 2019 meeting. For the purpose of these informal comments, CWA will focus on applications, since they represent the majority of Commission proceedings, but certain proposals and practices may be applicable to multiple types of Commission proceedings.

EXISTING GUIDELINES AND REQUIREMENTS

Statutory and Commission requirements designed to facilitate the timely resolution of Commission proceedings already exist. For example, the California Public Utilities Code requires the Commission to issue a decision within 18 months in ratesetting or quasi-legislative proceedings.¹ On an industry-specific level, the Commission's Rate Case Plan for Class A water utilities includes schedules that provide for resolution of these proceedings within 14 months for single district utilities and 20 months for multi-district water utilities.² These schedules include deadlines for holding a pre-hearing conference ("PHC"), as well as issuance of a proposed decision and final decision.

None of these deadlines are absolute, however. The Public Utilities Code allows the Commission to specify a resolution date later than 18 months in the scoping memo as long as it explains the reasons for the extension.³ Additionally, if the Commission determines at some point that the 18-month deadline cannot be met, it may approve a decision that allows it to issue an order extending the deadline.⁴ Although the order must explain why the deadline cannot be met, in practice the explanation provided is limited and the issuance of these orders has become routine practice for the Commission. Similarly, while the Water Rate Case Plan schedule may be modified according to the needs of a particular proceeding, the issuance of a decision is often delayed even when the parties have reached a settlement and/or adhered to the schedule set forth in the Plan.

Any effort by the Commission to expedite Commission proceedings should include an examination of its compliance with existing deadlines and requirements. The Commission should collect data on delayed proceedings, including the number of orders it issues extending the statutory deadline, the length of the delay, and whether multiple extension orders are issued. The Commission should also collect data on adherence to industry-specific deadlines, such as the Water Rate Case Plan. Finally, the Commission should analyze the causes of delayed proceedings, particularly whether the delays are due to things like discovery disputes, extended evidentiary hearings, and party schedules, or whether they are due to internal delays or resource limitations within the Commission. Assessing the root causes of these delays will help the Commission determine the best methods to minimize or avoid such delays in the future. To improve accountability, this information should be made public.

The Commission should commit to meeting the existing deadlines set forth in the Public Utilities Code, the Rules and Practice and Procedure, and its own decisions. While parties to Commission proceedings can be penalized for failure to meet established deadlines, there are no direct repercussions for the Commission itself. This can be frustrating and may undermine confidence in the Commission's ability to carry out its regulatory responsibilities.

¹ Pub. Util. Code §1701.5(a).

² D.07-05-062, *Order Instituting Rulemaking to Consider Revisions to the General Rate Case Plan for Class A Water Companies*, Opinion Adopting Revised Rate Case Plan for Class A Water Utilities, Appendix A, p. A-5. The 14 and 20-month periods begin with submission of the proposed application to the Public Advocates Office for review 60 days before the filing of the final general rate case application.

³ Pub. Util. Code §1701.5(b).

⁴ *Id.*, §1701.5(a).

COMMON AREAS OF DELAY

As CWA discussed at the March 27, 2019 meeting, the most problematic delays often occur at the very beginning and the very end of Commission proceedings. At the start, many proceedings are delayed because of failure to schedule a PHC or issue a scoping memo in a timely manner. Without the PHC and the scoping memo, the parties have little or no guidance as to the issues to be addressed in the proceeding or the schedule moving forward. Delays in scheduling a PHC or issuing a scoping memo can effectively suspend a proceeding, to the detriment of the affected parties and those they represent. The PHC should be held shortly after the protest period ends and the scoping memo should be issued as soon as possible following the PHC. This lessens the potential for discovery disputes and allows the parties to expend time and resources in the most effective manner.

The Policy & Governance Committee has suggested setting standardized dates for PHCs following the protest period. CWA supports this suggestion and recommends that PHCs be held within 30 days of the conclusion of the protest period. To conserve resources, CWA also supports the use of telephonic PHCs when feasible, including for uncontested proceedings. CWA also suggests that the Commission adopt standardized dates for issuance of scoping memos following a PHC and recommends that scoping memos be issued no later than 30 days after a PHC is held.

Significant delays also often occur after a proceeding has been submitted for a decision,⁵ despite the existence of statutory and Commission requirements. The Public Utilities Code and the Commission's Rules require assigned commissioners and administrative law judges to issue a proposed decision within 90 days after submission.⁶ As a practical matter, however, this deadline is often missed. Delays during this period can be particularly frustrating for affected parties because of the lack of transparency regarding the Commission's internal processes.

CWA suggests that the Commission amend its rules to require an order to be issued if the assigned administrative law judge or commissioner is unable to issue a proposed decision within 90 days of submission. The order should explain why the proposed decision is delayed and set a new date for issuance. These proceedings should be prioritized within the Commission and the Commission should provide additional resources to the administrative law judge or Commission staff as necessary to avoid further delays. Finally, the Commission should also track the number of proceedings where the 90-day deadline is not met and include that data in the information made available to the public.

OTHER PROPOSALS

In addition to proposing standardized dates for PHCs, as discussed above, the Policy & Governance Committee also set forth other possible ways to expedite Commission proceedings. One suggestion was to use the pre-filing period for early discovery. As CWA

⁵ "A proceeding shall stand submitted for decision by the Commission after the taking of evidence, the filing of briefs, and the presentation of oral argument as may have been prescribed." Rule 13.4, CPUC Rules of Practice and Procedure.

⁶ Pub. Util. Code §311(d); CPUC Rule 14.2(a).

discussed at the March 27, 2019 meeting, however, this is unlikely to increase the efficiency of Commission proceedings. First, an applicant may still be finalizing the details of its position during this pre-filing period and so not be prepared to respond constructively to discovery requests. Despite the best efforts of the applicant, information provided during this period could be subject to change once the application is filed. Second, not all interested parties will be prepared to conduct this type of early discovery, and indeed may not be aware of the proceeding until the application is filed and notice is provided. Third, with respect to water utilities at least, the Commission has already addressed this issue in the context of general rate cases and cost of capital proceedings. The Water Rate Case plan includes Minimum Data Requirements, which evolved from a master data request routinely submitted by the predecessors to the current Commission's Public Advocates Office.⁷ This information, which is intended to streamline the formal discovery process, is provided to the Public Advocates Office with the proposed application and included with the final application.⁸

The Policy & Governance Committee also recognized that evidentiary hearings are not necessary in every proceeding and discussed ways to determine the need for hearings. The purpose of evidentiary hearings is to address disputed factual issues, and CWA agrees that not all proceedings require an evidentiary hearing. Disputes regarding policy and legal issues are usually best suited for briefing, and the Commission should avoid holding evidentiary hearings simply because the matter is particularly contentious or high profile. CWA supports consideration at PHCs and in scoping memos to determine whether evidentiary hearings are necessary and moving on to briefing when they are not.

Finally, the Policy & Governance Committee also noted the current practice of limiting a motion to a single request,⁹ and queried whether allowing combined requests in a single motion would increase efficiency. Although CWA is unsure whether this limitation has substantially contributed to the delay in Commission proceedings, it is also likely that combined motions are more efficient for parties and the Commission. In order to avoid further delays, however, the Commission should make it clear that such combined requests can be addressed in separate orders if necessary.

⁷ D.07-05-062, pp. 21-23.

⁸ *Id.*, Appendix A, pp. A-22 – A-31.

⁹ "A motion is a request for the Commission or the Administrative Law Judge to take a specific action related to an open proceeding before the Commission." Rule 11.1(a).

NEXT STEPS

CWA is prepared to expand on these informal comments at workshops or in future formal comments. CWA is pleased to assist the Commission in its efforts to ensure timely resolution of Commission proceedings and looks forward to continued participation as the Commission considers this issue. If you have any questions, please feel free to contact me the undersigned at LDolqueist@nossaman.com or (415) 438-7221.

Sincerely,



Lori Anne Dolqueist
of Nossaman LLP
Attorneys for California Water Association

cc: Administrative Law Judge Hallie Yacknin